

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

CAFÉ PATACHOU AT CLAY TERRACE, LLC, ) MONON HOLDING, LLC, NAPOLESE AT 30 ) SOUTH, LLC, NAPOLESE OF KEYSTONE ) CROSSING, LLC, NAPOLESE, LLC, ) PATACHOU, INC., PATACHOU AT 49 <sup>TH</sup> AND ) PENN, LLC, PATACHOU AT HAZEL DELL, ) LLC, PATACHOU ON THE PARK, LLC, ) PATACHOU PROVISIONS, LLC, PETITE ) CHOU AT BROAD RIPPLE, LLC, PUBLIC ) GREENS CHQ, LLC, and PUBLIC GREENS ) FASHION MALL, LLC, )  Plaintiffs, )  v. )  CITIZENS INSURANCE COMPANY ) OF AMERICA, )  Defendant. )	Case No.: 1:20-cv-1462  Removed from Marion County Superior Court  Case No. 49D01-2004- PL-014126
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**NOTICE OF REMOVAL**

Please take notice that Defendant, Citizens Insurance Company of America, hereby removes to this Court the state court action described below pursuant to 28 U.S.C § 1441, *et seq.*, 28 U.S.C. § 1332 and 28 U.S.C. § 1446.

1. On or about April 17, 2020, Plaintiffs, Café Patachou at Clay Terrace, LLC, Monon Holding, LLC, Napolese at 30 South, LLC, Napolese of Keystone Crossing, LLC, Napolese, LLC, Patachou, Inc., Patachou at 49<sup>th</sup> and Penn, LLC, Patachou at Hazel Dell, LLC, Patachou on the Park, LLC, Patachou Provisions, LLC, Petite Chou at Broad Ripple, LLC, Public Greens CHQ, LLC and Public Greens Fashion Mall, LLC commenced an action in the Marion County Superior Court, Civil Division 1 in the State of Indiana entitled *Café Patachou at Clay Terrace, LLC, Monon Holding, LLC, Napolese at 30 South, LLC, Napolese of Keystone Crossing, LLC, Napolese, LLC,*

*Patachou, Inc., Patachou at 49<sup>th</sup> and Penn, LLC, Patachou at Hazel Dell, LLC, Patachou on the Park, LLC, Patachou Provisions, LLC, Petite Chou at Broad Ripple, LLC, Public Greens CHQ, LLC and Public Greens Fashion Mall, LLC v. Citizens Insurance Company of America*, Case No. 49D01-2004-PL-014126 (the “State Action”).

2. As explained below, the State Action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one that may be removed to this Court pursuant to 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

**This Removal Notice Is Timely**

3. Pursuant to 28 U.S.C. § 1446, “[t]he Notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading ....”

4. The first date upon which Citizens received a copy of the Complaint in the State Action was April 23, 2020, when Citizens was served with a copy of the State Action Complaint. A true and correct copy of the State Action Complaint and accompanying documents is attached hereto as **Exhibit A**.

5. Pursuant to 28 U.S.C. § 1446(a), Exhibit A consists of all “process, pleadings, and orders” served on Citizen in the State Action.

6. Pursuant to Local Rule 81-2, the State Court Record is attached hereto as **Exhibit B** and contains a copy of the Marion County Superior Court docket sheet, all pleadings, motions, orders, and all other filings, organized in chronological order by the state court filing date.

### **Diversity Of Citizenship**

7. For diversity jurisdiction purposes, a corporation is deemed to be citizen of the state in which it is incorporated and the state where it has its principal place of business. 28 U.S.C. 1332(c)(1); *CCC Information Svcs., Inc. v. American Salvage Pool Ass'n*, 230 F.3d 342, 346 (7th Cir. 2000).

8. The citizenship of a limited liability company is the citizenship of each of its members for the purpose of diversity. *Thomas v. Guardsmark, LLC*, 487 F.3d 531, 534 (7th Cir. 2007).

9. Plaintiff, Patachou, Inc., is a corporation organized and existing under the laws of the State of Indiana and with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶7.

10. Plaintiff, Café Patachou at Clay Terrace, LLC, is an Indiana limited liability company with its principal place of business in Carmel, Indiana. **Ex. A** at ¶2. Plaintiff, Patachou, Inc. is the sole member of Café Patachou at Clay Terrace, LLC. **Ex. A** at ¶ 7.

11. Plaintiff, Monon Holding, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 3. Plaintiff, Patachou, Inc. is the sole member of Monon Holding, LLC. **Ex. A** at ¶ 7.

12. Plaintiff, Napolese at 30 South, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 4. Plaintiff, Patachou, Inc. is the sole member of Napolese at 30 South, LLC. **Ex. A** at ¶ 7.

13. Plaintiff, Napolese of Keystone Crossing, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 5. Plaintiff, Patachou, Inc. is the sole member of Napolese of Keystone Crossing, LLC. **Ex. A** at ¶ 7.

14. Plaintiff, Napolese, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 6. Plaintiff, Patachou, Inc. is the sole member of Napolese, LLC. **Ex. A** at ¶ 7.

15. Plaintiff, Patachou at 49<sup>th</sup> and Penn, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 8. Plaintiff, Patachou, Inc. is the sole member of Patachou at 49<sup>th</sup> and Penn, LLC. **Ex. A** at ¶ 7.

16. Plaintiff, Patachou at Hazel Dell, LLC, is an Indiana limited liability company with its principal place of business in Carmel, Indiana. **Ex. A** at ¶ 9. Plaintiff, Patachou, Inc. is the sole member of Patachou at Hazel Dell, LLC. **Ex. A** at ¶ 7.

17. Plaintiff, Patachou on the Park, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 10. Plaintiff, Patachou, Inc. is the sole member of Patachou on the Park, LLC. **Ex. A** at ¶ 7.

18. Plaintiff, Patachou Provisions, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 11. Plaintiff, Patachou, Inc. is the sole member of Patachou Provisions, LLC. **Ex. A** at ¶ 7.

19. Plaintiff, Petite Chou at Broad Ripple, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** ¶ 12. Plaintiff, Patachou, Inc. is the sole member of Petite Chou at Broad Ripple, LLC. **Ex. A** at ¶ 7.

20. Plaintiff, Public Greens CHQ, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 13. Plaintiff, Patachou, Inc. is the sole member of Public Greens CHQ, LLC. **Ex. A** at ¶ 7.

21. Plaintiff, Public Greens Fashion Mall, LLC, is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana. **Ex. A** at ¶ 14. Plaintiff, Patachou, Inc. is the sole member of Public Greens Fashion Mall, LLC. **Ex. A** at ¶ 7.

22. Citizens was at the time of the filing of this action, and is, a corporation incorporated under the laws of the State of Michigan, with its principal place of business in the State of Michigan.

**The Amount In Controversy Exceeds \$75,000**

23. Plaintiffs' Complaint arises out of an insurance coverage dispute between the parties. According to the allegations of the Complaint, Plaintiffs collectively operate 12 restaurants in Indianapolis and Carmel, Indiana and employed approximately 350 people at the beginning of March 2020. **Ex. A** at ¶ 18.

24. As a result of the COVID-19 pandemic, Plaintiffs' elected to completely close 11 of their 12 restaurants shortly after March 31, 2020, despite an Executive Order from Governor Eric Holcomb which allowed restaurants to remain open for take-out and delivery services. **Ex. A** at ¶¶ 26-27.

25. Following the restaurant closures, Plaintiffs made a claim for business income and extra expense loss under Commercial Property Insurance Policy No. Z7W9183929 08 (the "Policy") issued by Citizens to Plaintiffs. Plaintiffs' claim was denied and the instant dispute followed.

26. Plaintiffs allege that their incurred loss is ongoing and will continue for some time. **Ex. A** at ¶ 40.

27. In their Complaint, Plaintiffs seek an award of "all amounts owed [to Plaintiffs] pursuant to the terms of the Policy," and "compensatory, consequential and other damages to

which it may be entitled, including but not limited to the attorneys' fees and expenses incurred in bringing this action."

28. Given the nature of the loss and the number of plaintiffs and locations involved, Citizens has a good-faith basis to assert and believe that the amount in controversy far exceeds \$75,000, exclusive of costs and interest.

### **Venue**

29. Venue on this removal lies in the United States District Court for the Southern District of Indiana because the state action was filed by Plaintiffs, and is now pending, in this judicial district. *See* 28 U.S.C. §84(c)(2); 28 U.S.C. § 1446(a).

### **Other Removal Prerequisites Have Been Satisfied**

30. Citizens is the only defendant that has been named in this action.

31. There have been no substantive proceedings in the State Action since the filing of the Complaint.

32. Citizens has sought no similar relief with respect to this matter.

33. Written notice of the filing of this Notice of Removal will be given to Plaintiffs as required by 28 U.S.C. § 1446(d).

34. Pursuant to 28 U.S.C. § 1446(d), upon filing this Notice of Removal in the Office of the Clerk of the United States District Court for the Southern District of Indiana, Citizens has also filed a copy of this Notice of Removal with the Clerk of the Marion County Superior Court, to effect removal of this action.

35. The allegations in this Notice of Removal are true and correct and this case is within the jurisdiction of the United States District Court for the Southern District of Indiana.

WHEREFORE, Citizens respectfully requests that this action be removed to this Court from the Marion County Superior Court.

Dated: May 20, 2020

TRESSLER, LLP

By: /s/ William K. McVisk  
Attorney for Defendant  
Citizens Insurance Company of America

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2020, a copy of foregoing NOTICE OF REMOVAL was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: May 20, 2020

TRESSLER, LLP

By: /s/ William K. McVisk  
Attorney for Defendant  
Citizens Insurance Company of America

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